STATEMENT

OF THE

FINANCIAL TRANSACTIONS

OF

THE BANKING FIRM

OF

TRUSCOTT, GREEN & CO.

OF TORONTO,

IN CONNECTION WITH

GREEN, BROWN AND CO.

OF NEW YORK;

AND

BROWN, BUCKLAND & CO.

OF BUFFALO.

BUFFALO, JULY 1838.

BUFFALO.
1838.

STATEMENT.

"Nothing extenuate, nor set down aught in malice."

In consequence of the many conflicting reports in circulation relative to the affairs of the late Agricultural Bank at Toronto, the undersigned, George Truscott and John Cleveland Green, are constrained, as well from regard to their own characters as from deference to public opinion, to trace out the origin of their accummulated misfortunes, and to present a correct view of their present pecuniary circumstances.

A narrative confined to general assertions carries little conviction to the reader; and it is therefore preferable to incur the risk of being tedious, rather than the suspicion of being incorrect: nor is it believed that men, who deprecate injustice, or who value truth in the abstract, will be deterred from the perusal of this exposition, either by the length or the ruggedness of the way.

Entertaining these sentiments, the undersigned may, without further comment, proceed to state that they commenced business as private bankers at Toronto in June 1834; and, without dwelling on the prejudices or formidable opposition they had to encounter, both at the outset, and during the whole of their career, it is sufficient to observe that they were not found inadequate to the task they had undertaken.

The growing importance of this city indicated, at a very early period, the expediency of establishing some connection at Buffalo; and in the ensuing month of October they selected John W. Buckland, one of their clerks at Toronto, to open an office here: from the same date they voluntarily raised his salary from $400 per annum to $1000.

Note.—The numbers in brackets correspond to those of the original agreements, letters, accounts and other documents, which are in the possession of Truscott & Green, and may be referred to, to prove their accuracy.

In the conduct of the business entrusted to Mr. Buckland. he displayed considerable tact and judgment; and confiding in his declarations that no temptations of profit should urge him to engage in any transactions of a doubtful nature, larger means were gradually placed under his control.

About the 13th of December, [1.]Mr. Buckland submitted a proposal for forming a connection with Russell Searle Brown; and, although declined in the first instance, the undersigned were induced, by subsequent representations to agree, in April 1835, [2.] to give both parties an interest in the business at Buffalo—that is,

To R. S. Brown 25 per cent of the nett profits;
" J. W. Buckland 15 " " " " .

Neither of them were in a situation to contribute any capital whatever; and the undersigned consented to advance them $30,000 on their joint promissory note for one year certain, bearing an interest of 6 per cent. It was, also, stipulated, "That no part of the original capital of $30,000, or of any other funds provided by Truscott, Green & Co. should be invested in real property or diverted from the ordinary business of Exchange and Discount Brokers; nor shall any fund raised on the joint credit of J. W. Buckland and R. S. Brown be differently appropriated."

Immediately after the execution of this agreement, Mr. Brown's credit and respectability were considered as put to the test by his obtaining the endorsement of R. S. Williams & Co. on bills for £5,000 sterling, drawn by the Agricultural Bank on N. M. Rothschild of London—and by means of which they were more readily negotiated at New York.

Mr. Green then went to England and provided for the foregoing bills; and on his return, in the autumn of 1835, he found the advances of the Agricultural Bank to have been raised from $30,000 to about $88,000; an increase induced, in a great measure, by the representations of Brown & Buckland [3-4.] of the abundance of Canada money at Buffalo, but, which whenever remittances were forwarded for the purchase of it,was said to have disappeared; and then assurances were given that the money could be LOANED very advantageously at Buffalo, and should be returned whenever it might be required.

However, the fallacy of these representations became apparent, when an application was made on the 29th of Oct. [5.] to reduce the balance to $60,000; and this reduction not taking place, the Bank sustained much inconvenience at the time, and was afterwards subject to vaccillating and injudicious operations from the same cause.

On the 12th of November, [6.]Mr. Brown, who was then at New York, communicated his views of opening an office there in the spring of 1836, and proposed to the undersigned, that their aggregate advances should be increased to $100,000: he was, however, apprised that $80,000, must constitute the limit; and, on the 2nd Dec. [7.] he wrote, "I have been urged by two Banks in whose direction I have personal friends, to open my account with them, and they say I shall be placed No. 1, in the scale of accommodation; and in our, 'the National Bank,' I am offered the appointment of Director." On returning to Buffalo, his solicitations for further temporary remittances were repeated, and accompanied with the usual profession of repaying them when needed.

By reducing the amount of Bills Discounted in Canada, and borrowing money in England, the undersigned were enabled to meet these growing and almost incessant demands on them, so that when in April 1836, new articles of Partnership were executed, the amount owing at Buffalo was $131,648.12

Or, in permanent capital, 80,000

In a fluctuating temporary balance, 51,648.12.

But in this latter sum was included $20,000 of Agricultural Bank notes required for some specific purpose by Brown & Buckland, and not intended to be put in circulation.

As it was not proposed to continue advances to them upon such a scale, they were successively advised on the 16th and 23d April, and again on the 7th May, [8. 9. 10.] that a reduction of 16 or $20,000 must be made before the expiration of the month.

About this time, Mr. Brown commenced business at New York under the firm of "Green, Brown & Co." and ceased exercising any immediate or direct influence over the business at Buffalo, the latter being carried on agreeable to the Partnership Deed, "under the direction and control of the said George Truscott and John Cleveland Green, but under the personal management of the said John Wellington Buckland and of any other party whom they, the said George Truscott and John Cleveland Green may hereafter appoint." And accordingly, [11. in the following October this trust was reposed jointly on Mr. Buckland and Mr. Esten. It was further stipulated in the 15th clause, "That no money shall be lent or advanced to any of the said Partners without the consent in writing of all the other Partners being first had and obtained; and that if any Partner shall at any time stand indebted to the partnership effects in any sum or sums of money, to the amount of £1250 cur-

cent money of Upper Canada, or upwards, without such consent, such partner shall be immediately expelled the partnership," &c.

Having also defined in the same instrument the legitimate nature of their future business, and prohibited any investments in Bank Stock or National Securities, without the consent of ALL the partners, the undersigned reposed with unlimited confidence on the good faith and integrity of the parties with whom they were connected, and whose interests seemed so indissolubly blended with their own: and it never occurred to them, either prior to this date or subsequently, to enter upon any examination of the books at Buffalo for the purpose of verifying the statements of profit and loss occasionally submitted to them.

The balances in favor of Toronto continued undiminished, and although the undersigned acquiesced, in the first instance, from representations of the evil being temporary, and of its being remedied as soon as Mr. Brown should "get under weigh" at [12. New York, they discovered subsequently that it had taken a permanent character, and was ascribable to the heavy investments in bank stock, made without any previous consultation with the undersigned, slightly and incidentally touched upon in correspondence, and only fully developed when embarrassments grew out of the operations. For instance, regardless of the spirit of the articles of partnership of the 8th of April 1835, and of the more direct provisions of the Deed of the 2nd of April 1836, it appeared that Brown & Buckland had purchased of the Lumbermen's bank stock, about $52,000.
of the Commercial Bank at Buffalo, on separate account, - - - - - 36,000.
and in joint account with other parties, 76 300.
And, as proprietors of stock, they represented that both banks would be brought under their control; and that, independent of this advantage, the dividends would constitute a profitable return on the capital employed. However, a few days later, that is, on the 14th day of June, a contract was made [13 with I. T. Hatch for the sale of $40,000 Commercial Stock, on the joint account, payable in two, four and six months at the rate of 175 per cent—and having for this profitable consideration abandoned their influence in the bank, it was proposed that Mr. Green should proceed to London and HYPOTHECATE a further amount of stock, so as to carry on the general business of exchange between the two countries, without the necessity of disposing of stock or maintaining cash balances in London.

To perfect an arrangement of this kind, the certificates of the Commercial bank previously held by Brown & Buckland were consolidated; and about the 24th of June

400 shares were transferred into the separate name of J. C. Green,
323 " " " J.W.Buckland,
400 " remained in " R.S. Brown.

1123 Shares.

On the 9th of August, when Mr. Green was on the eve of his departure from New York, Mr. Brown addressed a letter [14. to him setting forth the particulars of the stock held by the firm, and the flourishing condition of the banks; and in his subsequent letters of the 16th of Aug. and 1st of Sept. [15.16. he dwelt upon these topics, but carefully withheld all notice of any injunction having been served at the suit of the Commercial Bank, to prevent the transfer of the stock.

Unacquainted with any such proceeding, Mr. Green negotiated a credit in London with two banking houses—one for £5,000 sterling by hypothecating 243 shares of Commercial stock, and the other for £20,000 sterling by undertaking to hypothecate,

480 shares Commercial Stock,
and 1040 " Lumberman's do.

It was not however until his return to New York that any intimation reached him on the subject of a partial injunction, on the stock in the separate names of J. W. Buckland & R. S. Brown—and it was then spoken of by the latter as a matter of slight moment, and placed in the following point of view —that Mr. Hatch having accomplished his object of getting the control of the Commercial Bank had found it convenient to recede from his agreement; and to cloak this design, had made an application to the Court of Chancery for an injunction under the allegation that some part of the stock had been purchased with the funds of the bank, obtained by other parties as discounts, and whose notes MIGHT not be paid at maturity! that Mr. Hatch only aimed at creating a temporary difficulty to incapacitate him from delivering the stock at the extravagant price agreed upon, but that the attempt would fail, as there was other stock ready for delivery—that he, Brown, had taken the advice of Mr. Dudley Selden of New York, who assured him that the injunction could not be sustained on such grounds—and that his only reason for not applying to the court to set it aside was the fear of exposing

the proceedings of the bank, prejudicing the stockholders, and perhaps leading to the revocation of the bank charter.

This reasoning appeared sufficiently plausible, and it unfortunately influenced Mr. Green's after conduct, for he entertained no suspicion at that time derogatory to the honor or veracity of his partner.

However, having taken up his permanent residence at New York, Mr. Green's attention was drawn, on the 14th of December, to the large "balance of cash" on the day book, amounting to - - - $86,400 61

and on being told by Mr. Brown that it included a very considerable amount of uncurrent money purchased at a discount, with some other items not carried to account, Mr. Green proceeded to investigate the particulars, and found the results as follows— [17

In uncurrent notes, - -	$2,791.00
" current notes and specie, - -	172.56
" cheques of sundry persons not carried to account, - - -	3,798 82
" salaries and petty expenses, - -	1,361 03
" Starkweather & Brown's drafts on R. S. Williams & Co. not entered at their debit in the books of the office, but collected from pencil memorandums on the fly leaf of a small book,	74,652 83
" cheques of R. S. Brown, - -	249 00
" cash advances to do. - -	558 07
And deficiency in cash drawer, but afterwards accounted for, - -	1,999 89
Bill counted as cash but not payable until the 16th of Deecember, - -	817 41
being a total of - -	$86,400 61

On appealing WITH DEEP ANXIETY to Mr. Brown for explanation as to the preceding item of $74,652 83, he assured Mr Green that it was for account of Brown, Buckland & Co. the drafts of the latter not being as he said so negotiable at Buffalo as those of Starkweather & Brown on R. S. Williams.— A list of such payments was, therefore, forwarded to Mr. Buckland, and enquiry was made why they had not already appeared at the credit of Green, Brown & Co. Mr. Buckland's answer of the 1st of January disavowed any interest in [18. these drafts, although not in very explicit terms; but when this letter was exhibited to Mr. Brown, and longer concealment was impracticable, he admitted the incorrectness of his

previous assertions, and confessed that the drafts had been taken up for the private account of Mr. Starkweather and himself!

In extenuation of his conduct, he remarked that they had been refused all accommodation at Buffalo, on the ground of its being given to Brown & Buckland, and at New York to Green, Brown & Co.—that a loan of $20,000 owing by the latter to the Manhattan Bank had been GUARANTEED by his friend R. S. Williams, and that more dependence was placed on his name than on the Commercial stock hypothecated by the firm. Leaving it to be inferred that he was justified in appropriating the money of Green, Brown & Co. because he obtained an endorsement on one of their liabilities, and for which they alone made provision. Mr. Brown also contended that it was a matter of necessity to protect the drafts of Starkweather & Brown, because if they had gone back protested it would have been disadvantageous to the other firms with which he was connected. The futility of this reasoning was commented on at length in a letter to Mr. Buckland, [19. of the 12th of January, which Mr. Green concludes in the following words.

"I have not alluded to these transactions in any shape to Capt. Truscott, because I am sure they would inflict pain, anger and disappointment; and as I rely upon arrangements being made at Buffalo to repay this debt and the interest which it has cost us, as soon as Mr. Brown arrives there, I am willing that the subject should from thence forward be buried in total oblivion.

"I wish to have no concealment, and therefore I shall shew this letter to Mr. Brown."

It may be proper to observe that in the Ledger at New York, which had before engaged Mr. Green's attention, there appeared a balance of about $18000 IN FAVOR of Starkweather & Brown; and on a critical examination it was found to proceed from Mr. Brown having transferred $30,000 from the account of the Commercial Bank of Buffalo to the credit of Starkweather and himself. Although this transfer might have been reasonably objected to, on the ground that it was appropriating to their individual advantage, means which were probably conceded to Green, Brown & Co. as large stockholders, the account was suffered to remain in the position which Mr. Brown had assigned to it; and Mr. Green did not bring either circumstance to the knowledge of Capt. Truscott until the latter end of April, when it became evident that Mr. Brown could not redeem his pledge of repayment.

At the time of this discovery, the balance at Toronto against Brown, Buckland & Co. and Green, Brown & Co., independent of interest and profits for nine months amounted to - - - - - $185,000.

Being permanent capital of Truscott & Green, - - $80,000.
Their own floating advances, - 49,000.
Additional advances made by Mr. Dunn of his own free will, for which Truscott & Green gave their promissory notes 12 months after date, and came under other engagements, they now abstain from repeating, - - - 56,000.

At a subsequent period Green, Brown & Co. hypothecated with Mr. Dunn certificates of stock in the Bank of [20. Washtenaw for $55,000, without any application or claim for security on his part: It was Mr. Green's wish to have furnished Commercial stock as a preferable security, but Mr. Brown alleged that the latter was useful, and could not be dispensed with for raising temporary loans at New York.

On the 17th of March a remittance was received from Mr. Dunn amounting to $17,817,33 with instructions to purchase exchange on London at 8 premium; but as the exchange of the day was then 10, he was instantly apprised of the inability of Green, Brown & Co. to comply, and of their having placed the amount at his credit, ad interim.

Mr. Dunn did not immediately notice this communication, but he ultimately approved of what had been done, and repeated his instructions to remit at 108—which was found to be unattainable.

When Mr. Green left New York on the 13th of April, [21, Mr. Brown placed in his hands a statement of real property jointly belonging to himself and Mr. Starkweather at Buffalo; and in which its value was estimated at $385,000, producing an annual rent of $12,020, and an increase in perspective of $7,200, at the foot of this document, subscribed by Mr. Brown, he wrote, "Mr. Dunn, having in our hands a considerable amount of money, I would suggest that security on the above mentioned property in addition to what he now holds, be offered him, and if agreeable to him to accept it, Starkweather & Brown will at once execute to him the necessary papers."

No doubt Mr. Brown foresaw that the pressure of the time would effectually prevent him from paying the balance, then, about $61,000, owing to Green, Brown & Co.; and therefore he was anxious that SECURITY should be accepted in lieu

of money, and his letters of the 27th & 28th of April [22 & 23. fully corroborate this view. His intention was defeated by Mr. Starkweather's hesitation to concur; and on Mr. Green's return to New York, under the apprehension of increasing difficulties, he wrote to Mr. Dunn, and again of his own voluntary act enclosed certificates of Commercial Bank stock for $30,000, as additional collatteral security; and having read and sealed this letter in Mr. Brown's presence, he committed it to his charge for delivery, considering it probable that Mr. Dunn might arrive during his own absence.

On the same day, that is on the 3d of May, Mr. Brown again addressed himself to Mr. Starkweather urging him to join in giving real security to Mr. Dunn; and observing in one paragraph, read in Mr. Green's presence, that if any misfortune occurred to Green, Brown & Co. which he did not however anticipate, it would be occasioned by their HEAVY ADVANCES FOR STARKWEATHER & BROWN.

It was proposed that Mr. Green should have been the bearer of this letter to Buffalo, where other business required his presence; but when ready to depart, this important letter was not to be found; and, fearful of some further delusion being practised, Mr. Green wrote to Mr. Dunn, on his arrival at Albany, and conjured him not to make any additional loan, as he had contemplated, until it was seen whether he was amply secured for his prior advances: Mr. Dunn received this timely warning, and was not unthankful that it had been conveyed.

On the 4th of May, [24.] Mr. Brown mentions having forwarded the missing letter to Mr. Starkweather by mail; and on the 6th Mr. Green arrived at Buffalo, about two hours after the banks had been closed by injunction, which defeated the object of his mission, and by leaving on hand a large amount of inconvertable bank paper, constituted another source of alarm.

Thus circumstanced, both of the undersigned hastened to New York, where they arrived on the 13th of May; and as Mr. Dunn had already sailed for England the day previous, it was no longer practicable to substitute other securities for those he had taken with him; and Green, Brown & Co. being under heavy acceptances about falling due, Mr. Brown consented to grant bonds and mortgages to the undersigned, in consideration of his own and Mr. Starkweather's indebtedness, for the purpose of being assigned to the parties holding the acceptances of Green, Brown & Co. This arrangement was effected so far as Mr. Brown's interest was concerned, by his giving a bond and mortgage for $73,133; but Mr. Starkweather

refusing to concur in it, they subsequently gave their joint bonds and mortgages for the reduced sum of $42,531 47; and the former incomplete mortgage was discharged from the record.

The suspension of cash payments in the states, and the determination of Sir Francis Head that the banks in Upper Canada should pay out "their last shilling" rather than pursue the same policy, would have required extraordinary exertions on the part of the undersigned, even if they had been untrammelled by other causes; and although Mr. Buckland afforded them very effective co-operation they were for a time apprehensive of the worst results.

In the meanwhile, all confidence had ceased in Mr. Brown; and it having become imperative that he should retire, Mr. Buckland [25] wrote on the 11th of May, "In reference to Brown's withdrawing from the concern, I have, after consulting Esten, concluded that the best way would be for me to send my power of Attorney, which I accordingly inclose, although I entertain no doubt that he will do so without legal course."

Prior to making this demand upon Mr. Brown, it was desirable to arrive at some pecuniary settlement, in which the remuneration to be made by him and Mr. Starkweather, for the use of Green, Brown & Co's. funds, should bear some proportion to that which HE had paid other parties at their expense. For instance, Mr. Brown had borrowed at New York between the 18th of July and 31st of December 1836 a sum averaging per diem $18,700; and the interest paid upon this sum was charged to Green, Brown & Co. and averaged 4 per cent per month. On the other hand, the sums withdrawn for Starkweather & Brown's private account, between the 16th of May and 31st December 1836, averaged $36.332 per diem—and therefore it was proposed to charge them at the rate of 3 per cent per month, being 1 per cent less on the larger sum than had been actually paid on the lesser, or $18,700. Mr. Brown would not, however, accede to these terms; but consented that a third party, unacquainted with the circumstances should state generally the value of money, well secured, during the foregoing period; and his opinion was that legal interest should be charged from the 16th of May to the 1st of September 1836, and two per cent per month for the subsequent period, which was accordingly done; and on the 2nd of June 1837, Mr. Brown signed the accounts on [26 27] behalf of Starkweather & Brown, recognizing the balance then owing to Green, Brown & Co. of $59,683 59. Against this balance collatteral secu-

rity by mortgage and term given
as already mentioned for - $42,531 47
And it was agreed that they should
provide against a further claim from
the same quarter for - - 15,675 00.

Having arrived at this understanding, Mr. Brown was required to retire from the Firm; and, on the 7th June, he addressed the following letter [28] to the undersigned.

"I am desirous of withdrawing from the firms of Green, Brown & Co. and Brown, Buckland & Co. and of having the affairs closed up with as much dispatch as our mutual interest will admit of, and so soon as I can conveniently prepare a distinct proposition to that effect, and submit to you the terms upon which I would feel willing to place the whole business in your hands, it is my intention to do so. In the meantime I will refrain from undertaking any new liabilities for either firm, except with the written consent of at least one other member of the concern, and you have my consent to proceed to collect the outstanding debts due us and to pay and discharge our liabilities, so far as our means will allow. It is expected however, that no important transaction shall be entered into, without my being previously consulted." While these negociations were going forward, Mr. Buckland wrote [30] to Mr. Green, under date of the 26th of May, as follows:

"I regret to learn that you experience difficulty in settling with Brown. The interest and commissions as stated by you I consider UNDER THE CIRCUMSTANCES very moderate. As to Brown stating it was with my approbation this was done, is absurd. At the time he told me that the $30,000 was credited to him, (Commercial bank money,) I remonstrated, but ultimately fell in with his views, inasmuch as the bank had no lien upon us, and he said that he had used the credit of all his friends for us. On the subject of assuming William's account, there never was a word passed."

"I do not see how you are secure now with a lien of $30,000 before your mortgage, held in the shape of a judgment by Commercial Bank. Again it is almost impossible to set a correct value on the 1 1-4 acre on Court Street. I would not give $20,000 for it in these times; however Starkweather & Brown's bond for what they owe us could be collected, but that being only executed by Brown, and the debt to G. B. & Co. being due by S. & B. I much doubt whether Brown's bond could enable us to collect more than his half of the debt. I trust you will get from him an admission of S. & B's. debt to G. B. & Co.

Again on the 12th of June, Mr. Buckland writes [31] "As to Brown's not having authority to sign of S. & B. it is humbug and a mere get off. He must have become very scrupulous all at once. You are justified in holding any security you can touch in this instance, and it was my intention not to give up the deed executed by Brown. Starkweather, at the request of Brown, applied to me for it some days ago, to which I answered that it should be sent to New York, and this I shall do by Hensleigh. It cannot however, be recorded until acknowledged."

Also, on the 13th of June, Mr. Buckland remarks [32] "Brown arrived here yesterday, and seems most anxious to close up every thing, and I firmly believe he will do so equitably and honorably, notwithstanding the late difficulties. Be assurred that nothing shall take place here unless strictly so, and this I know has been always your aim and sole object in every transaction."

"Brown states that having obtained the security upon which we kept up large loans and upon which he could have got the money as well for S. & B. as for us—and that part of the credit he got ought to have been for S. & B., he conceives, after paying us commissions, &c. no person can complain of his conduct. Be this as it may, it will be more to the interest of all parties to wind up quietly if we can, and make no appearance of dissolution UNTIL WE ARE PREPARED."

Some days before Mr. Brown's return to Buffalo a large amount of unmatured bills, and others in suit, had been discounted at Toronto and placed to the credit of Brown & Buckland; the chief motive for this proceeding was to place such securites out of the reach of Mr. Brown, and the event will shew how justly suspicions were entertained; but there was another consideration, although a minor one, which was to increase the amount of bills discounted at Toronto, and diminish the sums owing in account—the sum total would, indeed, remain unaltered, but the composition of the account would be improved in public estimation whenever a statement should be required by the provincial legislature.

Notwithstanding Mr. Buckland's assurance that "I shall take care of our affairs here, [33] and keep them in my control," it would seem that Mr. Brown soon resumed his wonted influence over him, and gradually undermined his better resolutions. Representations were now made to the undersigned of the losses which must be sustained in winding up the affairs; they were told of the open avowal of drawers and

endorsers of bills, to avail themselves of the new usury law, and get rid of their liabilities at any direliction of principle—and hence the necessity of leaving Mr. Brown to cope with them; thus, negociations were opened for his assuming the entire affairs of Green, Brown & Co. and Brown, Buckland & Co.; and whilst they were in progress he prevailed on Messrs. I. C. P. Esten and J. W. Buckland, under whose joint management the business at Buffalo had been conducted, to withdraw from Messrs. Stanley & Talcott and S. G. Austin, the whole of the bills which had been placed in their custody for account of the Agricultural Bank, and which they had been carefully instructed to surrender only upon the separate acquittance of these two gentlemen, and not in the name of the firm. The pretence avowed to Mr. Esten for this withdrawal was Mr. Brown's wish to inspect the bills, so as to advise what portion should be renewed, secured, or otherwise left in suit; but having once obtained possession, he refused to restore them to Messrs. Talcott & Austin; and assigned as a reason for keeping them under his own lock and key, that instructions had been sent to New York to close the office and remove the books to Toronto without consulting him.

To this allegation it may be answered that Mr. Brown was virtually expelled by the terms of the Partnership Deed—that the reservation made in his letter of the 7th June, as to his being consulted on important transactions, was defined by himself, as touching the sale of bank stock—and that Mr. Buckland had granted to the undersigned full powers to act in his behalf. ---so that without reference to the truth or fallacy of the assertion, it must be admitted that they might lawfully have exercised such a discretion; and when it is recollected that the expense of maintaining an office at New York was excessive, and that no business remained to be transacted there, which a professional man was not better qualified to discharge, they might have justified themselves by the expediency of the measure. The office was however kept open at New York until the 9th October; and after having deprived themselves of the valuable services of Mr. Hensleigh at Toronto for four months, it is scarcely credible that Mr. Brown refused to make any allowance to that gentleman for his expenses at New York, alleging that he had been of no use to Green, Brown & Co., although he had previously grounded his defence for retaining these bills, on the presumption of Mr. Hensleigh's departure in July!

When Mr. Esten communicated the deception which had

been practised on him. Mr. Green was absent from Toronto; but having arrived there, on the 29th July, the undersigned left the same day in company with their legal adviser, intending to enforce their just rights for the recovery of the bills, and take proceedings at law against Mr. Brown: however, on reaching Buffalo, amicable overtures were made to them through Messrs. Esten & Buckland, which induced them to become parties to an agreement under date of the 30th July [34] wherein it was covenanted that Mr. Brown, with two other responsible persons, should grant a Bond of Indemnity to the undersigned against all debts due by Green, Brown & Co. at New York, and Brown, Buckland & Co. at Buffalo; and that for a consideration, which was then understood as amounting to about $41,879 50, Mr. Brown should "give unquestionable security on real estate for payment to the said George Truscott & John Cleveland Green, of the sums due J. H. Dunn,"

being - - - -			$18,281 83
"Messrs. Prescott, Grote & Co." being -			22,618 85
"G. Truscott & J. C. Green," being for Advances and interest thereon,		$151,308 32	
but which was reduced according to the original understanding of the above agreement in the sum of - -	$41,879 50		
and by subsequent demands, -	14,257 23		
together, - - - -		56,136 73	
Thus reducing the balance to - - -			95,171 59
And making a total of - - - -			$136,072 27

"payable within five years with interest at the rate of seven per cent. per annum payable thereon half yearly."

Until an adjustment could be effected on the foregoing basis, it was agreed that the bills and securities should remain in the vaults without prejudice to the rights of any party. However, regardless of this understanding, Mr. Brown took with him to New York the greater part of them, and either removed the remainder from the office, or placed them under seal in the private custody of Mr. Buckland. Therefore on the 26th August [35] the undersigned wrote to Mr. Brown that "unless these effects are restored immediately to Mr. Esten, who enjoys our confidence, and who will pledge himself as to the appropriation of the proceeds, we shall no longer delay issuing a public notice, setting forth the fraudulent manner in which the notes and secu-

rities have been abstracted, and we shall serve a special notice on every person indebted to the firms of Green, Brown & Co. and Brown, Buckland & Co., and enjoin them from paying over any money whatever. We shall, at the same time, announce the dissolution of partnership, and shall proceed to New York to submit our affairs to Messrs. Thomas, Wilson & Co. and Messrs. Brown & Brothers, and our principal creditors, and be governed by their opinion in making an assignment, or applying to the Chancellor for a receiver."

To this letter Mr. Brown replied on the 2nd September, [36.] by inveighing in general terms against the 'pecuniary weakness' of the Agricultural Bank, as if that weakness were not attributable to his acts—and of the "deception practised on him as to the extent of means" at command, as if those means had fallen short of the partnership agreement, instead of being actually raised from $80,000 to $173,927 17, or independent of Mr. Dunn, to $117,927 17! Such was the language of the man, who had advanced no capital, who had used that of his partners in violation of the most solemn obligations, and who now added insult to treachery.

At this juncture, Messrs. Esten and Buckland again interposed, and by their joint influence, the contending parties fell back on the original agreement of the 30th July. In discussing the basis recognized by it, Mr. Brown contended that the clause releasing him "to the amount of $30,000, together with the amounts charged for profit and interest" should be construed to extend beyond the existing partnership, and should equally effect profit and interest on a former partnership finally closed! Having gained this point, he next disputed his obligation to take up all the returned bills, which had been purchased, drawn or remitted for account of Green, Brown & Co. —and this concession to his demands entailed a further loss upon the undersigned, forming the aggregate sum of $56,-136 73.

The papers and agreements were then placed in the hands of Mr. J. L. Talcott, in order that the articles [37.] of dissolution and the bond of indemnity [38] might be drawn up in legal form; the date of the 15th September was assigned to them, but they were not executed until a later period, in consequence of Mr. Starkweather's refusal to sign the bonds which had been prepared to accompany the mortages to the undersigned.

When it was found that all arguments were unavailing with Mr. Starkweather, it became more imperative, in the estimation of the undersigned to obtain a disinterested valuation of

the property; and therefore instructions were given to Mr. Esten in the following words:

"It is proposed to lay the bonds and mortgages tendered by R. S. Brown before the Agents of the Ohio Life and Trust Company at Buffalo, and request them to certify whether they consider them as unquestionable security, according to the terms of the agreement, for $136,061: and if not, what is further required to make the security unquestionable."

Mr. Esten and Mr. Brown then consulted together, and submitted the following letter [39.] to H. B. Potter, Esq., as the Agent of the Trust Company:

"BUFFALO, 30th September, 1837.

H. B. POTTER, Esq.

"Dear Sir,—In the purchase of Messrs. Truscott & Green's interest in the firms of Green, Brown & Co. and Brown Buckland & Co., there is a balance agreed upon in their favor of $136,061, for which amount R. S. Brown has agreed to give 'unquestionable security upon real estate.' In pursuance of which he has executed his several bonds with accompanying mortgages (which mortgages are also executed by R. Starkweather,) mortgaging the several parcels of land referred to in the certificates herewith submitted; which parcels of land are subject to an aggregate incumbrance of $13,000. He also gives a covenant against all incumbrances executed by himself and two other persons of undoubted responsibility. You will be pleased to advise whether you consider the above mentioned property with his bond, unquestionable security for the said sum of $136,061.

Respectfully, yours,
(Signed) R. S. BROWN,
J. C. P. ESTEN, Agent
for Messrs. Truscott & Green."

[40.] "BUFFALO, September 30th, 1837.

"Gentlemen,—In reply to the question propounded to me in your statement within, I would state that I have examined the certificates of valuation and other papers submitted, and have no hesitation in expressing my opinion that the personal security therein mentioned, together with mortgages executed or to be executed by Mr. Brown and Mr. Starkweather upon the several parcels or lots of land briefly described in said certificates, is ample and unquestionable security for the sum of $136,061. Respectfully, your obedient serv't,
(Signed) H. B. POTTER.

Messrs. R. S. BROWN & J. C. P. ESTEN."

(For this opinion Mr. Esten allowed Mr. Potter a fee of $50.)

Certificates referred to in the preceding letter.

1. These certify [41.] that we believe the cash value of a lot of ground belonging to Messrs. Starkweather & Brown, said to contain about forty feet front and one hundred and fifteen feet deep, located in this city on the east side of Washington street, directly in rear of the Farmers' Hotel, to be three hundred dollars per foot front.

BUFFALO, October 12th, 1836.

(Signed)

HIRAM PRATT, G. O. PALMER,
L. F. ALLEN, P. B. PORTER, Jr.
J. W. CLARK, E. JOHNSON,
GEO. LEACH, H. R. SEYMOUR."
PIERRE A. BARKER,

I do not profess to have a knowledge of the value of the property above mentioned, but I have great confidence in the judgment of the gentlemen whose signatures are hereto signed.

(Signed) ISAAC S. SMITH.

2. We certify [42.] that we are acquainted with the location of the property herein described, and believe the sums affixed to each to be a fair valuation, not considering the present depressed state of the monied affairs of the country.

Lots No. 147 and 148, fronting on Court street, containing 1 1-4 acres, - - - - - $50,000
Lot known as the Niagara Bank property, being 60 ft. on Washington and extending through to Ellicott street, - - - - - - 50,000

BUFFALO, September 15th, 1837.

(Signed) JS. TROWBRIDGE,
PIERRE A. BARKER,
H. B. POTTER,
JNO. L. TALCOTT.

3. We certify [43.] that we are acquainted with the location of the property herein described, belonging to Messrs. Starkweather and Brown, and believe the prices affixed to each piece or parcel to be a fair valuation.

Lot on Seneca street, being 40 feet front, and 60 feet deep, with two stores thereon, renting at $12,000 per annum, - - - - - $17,000
Lot on Commercial street, being 22 1-2 feet front, with store thereon, renting at $800 per annum, 11,000
Lot on Franklin street, being 63 feet front and 115 feet deep, located nearly in front of E.

Johnson's cottage, vacant, - - - - 5,000

$33,000

Buffalo, Sept. 15th, 1837.

(Signed) PIERRE A. BARKER,
H. B. POTTER,
JS. TROWBRIDGE.

On receiving the foregoing letters and certificates Mr. Green transmitted copies to his partner at Toronto; and placing unlimited confidence in the professional judgment of Mr. Potter, he consented, on the 2nd October, to execute the articles of dissolution of the prior date of the 15th September, upon the explicit understanding that if the undersigned George Truscott should not concur, then the execution of the papers by himself, R. S. Brown, and J. W. Buckland, should be of no effect. They were then deposited in the custody of Mr. Talcott, who made a written memorandum for his own guidance in this respect; and who also took charge of the following schedule, which stipulated on what conditions the various bonds and mortgages were to be delivered up, viz:

"Schedule of mortgages [44] to be deposited with John L. Talcott, and to be applied as hereafter specified, whenever Capt. Truscott has notified his assent to the articles of agreement, executed this day by J. C. Green, J. W. Buckland and R. S. Brown, viz:

Mortgage No. 1, on 1 1-4 acre in Court street, $26,000
" " 2, " " " - 20,000
to be delivered to J. H. Dunn, on his giving up $40,000 Commercial Bank stock, held by him.

Mortgage No. 3, on the Niagara Bank lot, on Washington street, - - - 50,000

Mortgage No. 4, on two brick stores in Main street, as collateral security for $13,000 to be delivered up to J. C. P. Esten, on his giving up the notes and securities enumerated overleaf.

Mortgage No. 5, on Washington street, in rear of the Farmers' Hotel, for - - - 10,000
to be delivered up to J. C. P. Esten, on the return of $9,500 Lumbermen's Bank notes.

Mortgage No. 6, on lot on Seneca street, for 15,000
do " 7, do Commercial street, 10,000
to be delivered up to J. C. P. Esten, on the return of $24,300 Commercial Bank stock with Prescott, Grote & Co.

Mortgage No. 8, on lot in Franklin street, for 5,061
to be delivered up to J. C. P. Esten, on the return of Phelps, Dodge & Co.'s and J. R. St. John's notes.

$136,061

Phelps, Dodge & Co. on Phelps, James & Co., 10th March, 1837, for £1,000 sterling.
J. R. St. John & Co. on T. Wilson & Co., 9th March, 1837, for £800 sterling.

(Signed) R. S. BROWN,
J. C. GREEN.

Bills and securities deposited with J. C. P. Esten.

No. 2183, a 94.	L. D. & H. Howard's notes, for			$4,835 75
2195, April 6.	Stevens & Co.'s note, on which $2,000 has been received,			3,000
2196	" 11.	J. G. Dickie,		1,000
2197	" 22.	M. Q. Wood,		60
2198	" 19.	B. Burwell,		5,050
2199	" 8.	J. W. Clarke,		2,000
2202	June 1.	L. A. Spalding,		2,500
2203	" "	do		2,500

(Signed) R. S. BROWN,
J. C. GREEN."

☞ It is to be borne in mind that Mr. Dunn had advanced for the collective benefit of the firms, $56,000 00
Forming a portion of $173,927 17 standing at the credit of the undersigned—that he was, also, a further creditor at New York for 18,281 83

Making a total of $74,281 83
Of this amount there had been secured to Mr. Dunn, on other property and effects, independent of the Commercial stock, 28,281 83

And there was an anticipated balance in his favor of about $46,000
which it was contemplated to secure by bond and mortgage on the Court street lots, as recited in the Schedule.

However, the undersigned George Truscott declined becoming a party to this agreement until Mr. Dunn's formal assent to it was obtained—and although the latter had authorized Mr. Bidwell to express such [45.] concurrence, it was afterwards withdrawn, in order that he might learn through oth-

er channels the value of the property, for which he was required to surrender $40,000 Commercial stock.

This change of purpose was not so much to be deprecated as the unreasonable delay Mr. Dunn was guilty of in acting upon it—and during the state of suspense in which he kept all parties, Mr. Brown contended that the contract was independent of him—and whether the property were in reality worth $5,000 or $50,000, was wholly immaterial. This position was, however, utterly untenable, for the agreement of the 15th September had no legal existence, owing to the continued refusal of the undersigned George Truscott—and the agreement of the 30th July required Mr. Brown to give "unquestionable security on real estate;" and it was the well founded apprehension of this fact, which alone prevented Mr. Dunn from acceding to the subsequent arrangements.

In the anticipation that Mr. Dunn's inquiries would elicit nothing contradictory to the certificates, of so many respectable and well informed inhabitants of this city, the undersigned awaited the issue without suspicion, and stood prepared to perfect their contract. In this stage, Mr. Brown seems to have been under an apprehension that the mortgaged property, belonging to him and Mr. Starkweather, would be taken in execution on a judgment obtained by the Dry Dock Bank; and influenced by some consideration of the kind, he wrote a letter to Mr. Esten, the agent of the undersigned, on or about the 27th or 28th October, in which, after commenting upon the increasing difficulties of his situation, he observed that if Capt. Truscott was only withheld from executing the agreement of the 15th September, by reason of Mr. Dunn's refusal to deliver up the stock until he had satisfied himself of the adequate value of the mortgage, HE had no objection to Mr. Dunn's continuing to hold it.

When the letter was produced by Mr. Esten, it was considered so perfectly satisfactory, that he was instructed to return to Buffalo the following morning, and sign the agreement on behalf of Capt. Truscott, by virtue of a power of attorney he then held: and this was carried into effect on the 30th or 31st October.

It has been already noticed that Mr. Brown was under agreement with two other responsible persons to indemnify the undersigned against any debts of Green, Brown & Co. and Brown, Buckland & Co.—and such a bond had been executed by him, Rodman Starkweather and Lyman A. Spalding, and was one of the instruments deposited with J. L. Talcott on the 2nd October.

On the 1st November, the undersigned were arrested at Toronto, on a Capias at the suit of the City Bank of Buffalo, for an alleged debt of $10,000 and upwards; and finding that they were individually described as the acceptors of certain bills, wholly unknown to them, they became impressed with the belief that some forgery had been committed; and they despatched a messenger to Buffalo in the greatest haste to ascertain the facts of the case. In the meanwhile, it was necessary for the undersigned to procure bail; and regarding it as the mere affair of a day, they did not hesitate depositing with the gentlemen, who came forward in their behalf at Toronto, certain debentures, the property of other parties chiefly resident in England, and which had been left in their custody for the mere purpose of receiving the interest accruing on them from time to time.

It is perhaps needless to observe that no earthly consideration would have induced the undersigned knowingly and wilfully to have placed the owners of these debentures in a situation liable to loss; and if the remote possibility of it had occurred to them, they would have submitted to immurement in a dungeon as a preferable alternative.

On the evening of the 1st November, Mr. Esten accompanied by a clerk of Mr. Talcott's, arrived at Toronto, and delivered the deed of dissolution, the bond of indemnity, and certain mortgages, for which the corresponding effects mentioned in the Schedule were exchanged.

For these professional services Mr. Talcott afterwards retained, out of money collected for the undersigned, $173 50, as will appear from the following account. [46.]

"Nov. To Dr. Deed dissolution, attending consult, to settle setting, eng. copies, - - - $50
Dr. bonds, mortgages, covenants and other papers, eng. and settling, - - - 25
Examining and written opinion on six titles, - 60
Counsel fee, general services and advice on settlement with Brown—Custody and delivered papers, &c. - - - - - 50
Examining with Mr. Austin, and written opinion, on construction of agreement with Brown as to nature of security called for, - - 10
Sending student to Toronto 5 days exclusive of expenses, - - - - - 10
Dr. Release from City Bank, - - - 1

$206

Dec. 2. Cr. part of account assumed by Brown, 32 50

Balance, - - $173 50

On the 3rd the messenger returned from Buffalo, bearing the following letter from Mr. Brown.

Buffalo, Nov. 3rd, 1837.

Messrs. Truscott & Green, Toronto: [47.]

Dear Sirs,—I will positively arrange with the City Bank this day. The step which they have taken is an outrage which will recoil upon themselves. I have some five or six times talked with the officers of the Bank; I have as often frankly told them of our pending negociations, and assured them that so soon as complete, the business would be for ME to arrange; and their reply has been, "very well;" but the step has been taken and good faith violated, and it cannot now be helped. You have however nothing to fear, except the injury which it may prove to your circulation, &c., and to avert this I will give you a statement of facts which you will be at liberty to use.

In haste, (Signed) R. S. BROWN.

Notwithstanding these assurances, on which undue reliance was placed at the time, Mr. Brown took no effectual steps for relieving the undersigned, and discharging the proceedings so unjustly instituted at Toronto. Hitherto they had struggled effectually under every difficulty—they had sustained themselves under the heavy losses and deferred debt imposed upon them at Buffalo—they had met their own engagements notwithstanding the impossibility of collecting bills in Canada—they had continued cash payments for a period of seven months, during which the Banks in the United States had been constrained to suspend—they had seen the chartered Banks of Lower Canada, and the Commercial and Farmer's Bank of the Upper Province abandon the contest—and they were, in fact, by untiring energy and the confidence still reposed in them, retrieving their losses, and had entered into a contract [48.] for the redemption of the whole of their circulation on very favorable terms, when the City Bank of Buffalo struck a vital blow at their credit by arresting them under the disingenuous declaration of their being individual acceptors of certain bills, although it eventually appeared that the acceptances were those of Brown & Buckland, or Green, Brown & Co.—and which, if literally and truly set forth in the affidavits of debt would not have been sufficient, by implication, to have arrested the undersigned.

Thus betrayed on one hand, and oppressed on the other, they were aroused to a sense of their own situation having be

come irretrievable—but though ruin seemed to be impending over themselves, they had no reason to call in question their ultimate ability to perform substantial justice to all their creditors.

There are some debts of a more sacred character than others, however they may be regarded as co-equal in the eye of the law: He who reposes confidence seems most entitled to protection; and upon this principle, it was determined to secure, in the first instance, the Canadian depositors of the Bank, and those who kept accounts with it; and afterwards to appropriate the residue of their effects to the redemption of its circulation,—probably dispersed in many hands, and not held from motives of favor to the Bank, but of convenience to the parties.

In the same spirit certain bonds and mortgages received from Mr. Brown were assigned to secure various heavy debts then existing in England, and others to raise a new loan of £4,500 sterling; but with a distinct understanding that if events should demonstrate the inadequacy of the security, or the danger of employing the money, it should be returned to the parties: the propriety of adopting this latter alternative became sufficiently apparent when Mr. Babcock declined receiving the Court street property at a sum exceeding $20,000, although his own partner, Mr. Potter, had assigned a value to it of $50,000; and had, by his acts, influenced the undersigned to accept it conditionally for $46,000.

Therefore, assuming, what appears to be the fact, that all the mortgages are over estimated much in the same ratio, it would follow that instead of representing means for the ultimate discharge of debts to the amount of $136,061, they could not be expected to realize more than $59,157—in which case, the capital of the undersigned having been already sunk, the creditors of the Agricultural Bank would sustain a loss not previously anticipated of $76,904, constituting, with former deficiencies, a sum equivalent to the whole amount of notes in circulation.

Under such lamentable prospects, it would indeed have been an act of gratuitous folly and injustice to borrow money from one party, on insufficient security, in order to pay off the debt of another; and hence their resolution to return the greater part of the last loan of £4,500 sterling to England—and leave the mortgages charged with a diminished sum, which should not endanger the actual bona fide holders thereof.

It should be observed that when every probability had disappeared of Mr. Dunn's exchanging the Commercial stock for the Court street mortgages, Mr. Brown's applications were an-

swered by referring him to the pledge made in his own letter of the 27th or 28th October; and having, on the 14th February, reminded him of the assurance, on the faith of which Mr. Esten executed the agreement, he replied, "but you have not got that letter, and never will have it." Thus intimating, either that it was in his own possession, and if so, unlawfully; or that it had been destroyed, and if so, with a criminal intent.

However, subsequent to this admission, Mr. Brown produced A letter and read part of the contents to the undersigned, intimating that it was THE letter in question, and undertaking to return it to Mr. Talcott. On communicating the circumstances to Mr. Esten, he applied for the restoration of this letter, but ineffectually; and he is now prepared to prove the contents on oath, as well as the conversation which he had the previous evening with Mr. Brown, and which led to its being written.

The knowledge of such evidence being forthcoming probably induced Mr. Brown to discontinue his applications for the stock; and to consider how he could indirectly effect his purposes; and having, on the 18th May, got possession of the remaining bills on London, which the undersigned had covenanted to surrender, but which they had kept back to compel him to settle with the City Bank, he changed his whole ground of attack; and, on the 21st May, [49.] intimated that the agreement of the 15th September required the payment to Mr. Dunn of about $18,000, and for the breach of this covenant he should hold the undersigned to bail. Accordingly, on the following day, a capias was served upon them by the Deputy Marshal, although by his indulgence they were permitted to be at large, under mere nominal restrictions, until the 31st May, when having failed in arriving at a settlement with Mr. Dunn, whose demands rose in proportion to their difficulties, they were surrendered into the custody of the Sheriff.

The careful and unprejudiced reader will collect from the foregoing statement ample evidence to prove,

1st. That George Truscott and John Cleveland Green furnished the entire capital of the firms at Buffalo and New York —and that it exceeded double the amount they were under engagement to supply.

2nd. That this excess was drawn from them by artful representations, the effect of which was to convert temporary advances into permanent capital.

3rd. That they placed a blind but generous confidence in the honor and integrity of the parties, with whom they were connected, and that this confidence was abused.

4th. That their early difficulties originated in the unjustifiable speculations of Brown & Buckland in Bank stock, commenced in violation of the terms of their partnership, and without their knowledge,—imperfectly alluded to in their progress,—and developed when complant was unavailing,—and then the results, as a question of profit and loss, misrepresented.

5th. That the flagrant and secret appropriation by Mr. Brown of so large a sum at New York for private purposes, infinitely increased their embarrassment, and also entailed upon the firm pecuniary loss—inasmuch as Mr. Brown borrowed money for Green, Brown & Co. at the rate of 4 per cent. per month, and applied it to the use of Starkweather & Brown for one half the consideration paid.

6th. That owing to such acts of misconduct, the affairs of the undersigned became so deranged at Buffalo and New York, they were required, by the very author of their calamity, to make a deduction of $56,136 73 from the amount owing to them, besides abandoning their share of undivided profits to the amount of $30,797 38, and dividends on Bank stock estimated at $21,574.

7th. That all these losses were met with less reluctance, because their effects did not extend to the immediate creditors of the undersigned in Canada; and because this sacrifice carried with it a guarantee on the part of R. S. Brown, R. Starkweather and L. A. Spalding, to protect the interests of the creditors within the United States.

8th. That, reckless of the solemn obligations of this bond, Mr. Brown has taken no steps to discharge his debt to the City Bank—and by this neglect has irreparably injured the undersigned, and occasioned the detention of property at Toronto belonging to innocent parties.

9th. That deception has been practised on the undersigned in representing property at Buffalo as unquestionable security for $136,061, when it cannot be made available to their creditors for more than $59,157.

10th. That Mr. Brown has acquired and retains unlawful possession of a letter to Mr. Esten, which, under an equitable construction, constitutes as much a part of the agreement of the 15th September as if it had been embodied in it as a distinct clause; and that the agreement itself was not executed until such letter had been given.

And finally, that, having plundered, duped, and betrayed his victims, he has thrown them into prison, on account of their inability to discharge a debt to a third party of $18,000 —and which inability proceeds from his own breach of faith in not

giving them an adequate security for $46,000, acknowledged to be owing them, and which insufficient bonds and mortgages are now remaining in Mr. Talcott's hands, thus verifying the adage so obnoxious to humanity, "that the injured may forgive, but the injurer never."

It now remains for the undersigned to perform a more agreeable duty than has hitherto devolved upon them, by acknowledging the general kindness and sympathy which has been evinced towards them by the inhabitants of this city; and, above all, to express their grateful sense of the obligations they are under to the gentlemen who have so nobly and confidingly come forward to offer bail in their behalf, although possessed of a very imperfect outline of their affairs, and laboring under the disadvantage of no previous acquaintance with them.

GEORGE TRUSCOTT,
JOHN CLEVELAND GREEN.

BUFFALO, 27th June, 1838.